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IN THE
Supreme Court of the United States

OCTOBER TERM, 1945—No. 714

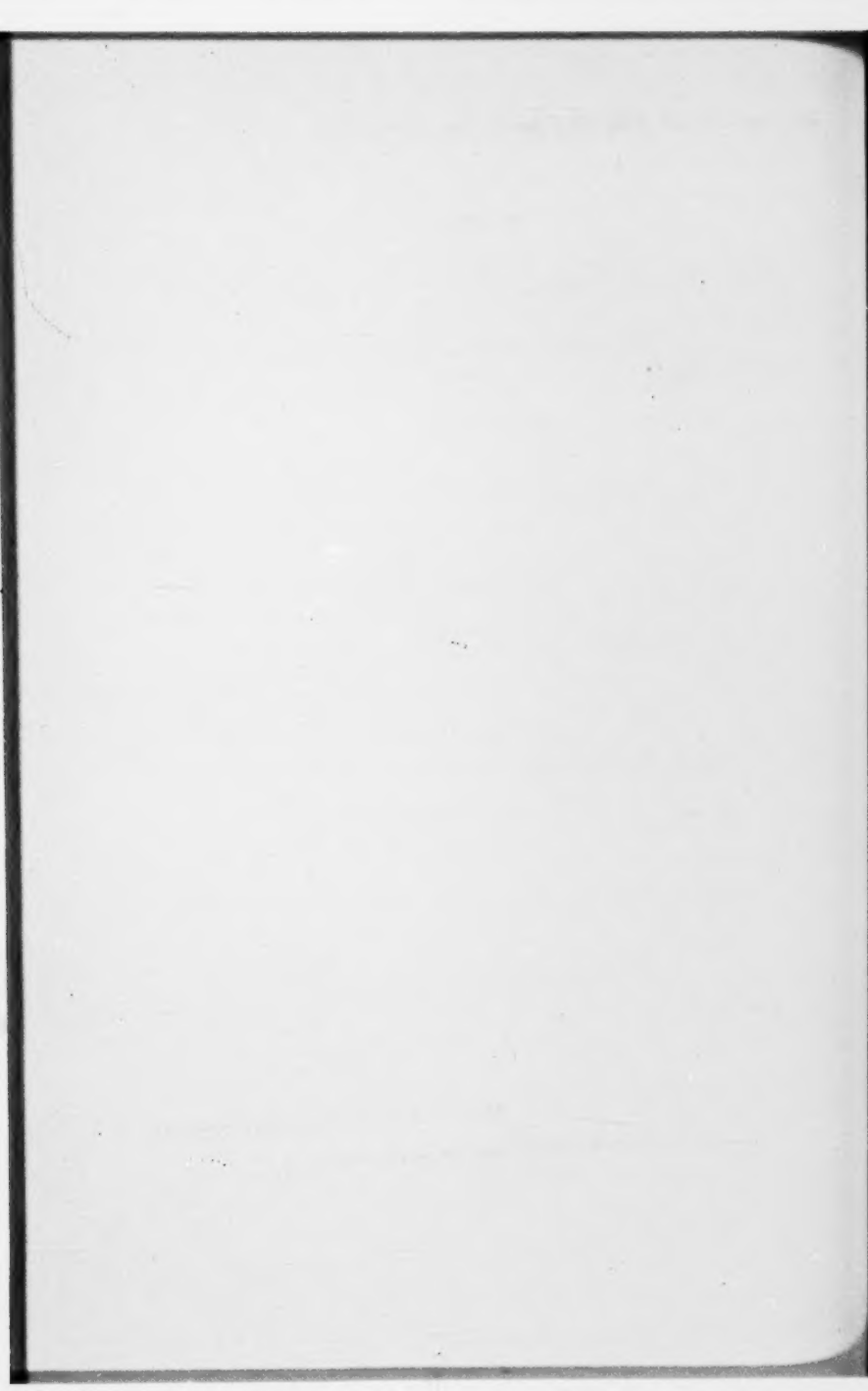
UNITED STATES OF AMERICA,
Petitioner,

v.

EDMUND CARL HEINE,
Respondent.

**BRIEF ON BEHALF OF RESPONDENT, IN OPPOSITION
TO THE PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT**

GEORGE GORDON BATTLE,
Counsel for Respondent.



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The opinion of the United States Circuit Court of Appeals reversing the respondent's conviction of conspiracy to violate Section 2(a) of the Espionage Act of June 15, 1917, has now been reported in 151 Federal Reporter, 2d Series, page 813, and reference is hereby made to that opinion as fully as if quoted in the brief. This opinion was unanimous. It was written by L. HAND, Circuit Judge, and concurred in by CHASE and FRANK, Judges. ~~It reviews very carefully and ably the facts and the law in the case.~~ It is submitted herewith as a part of this brief on behalf of the respondent.

It is respectfully urged that the decision of the United States Circuit Court of Appeals is so clearly correct that

there is no ground or reason that the writ of certiorari prayed for should be granted. The gravamen of the opinion of L. HAND, Judge, is:

“It is enough in the case at bar to hold, as we do, that whatever it was lawful to broadcast throughout the country it was lawful to send abroad; and that it was lawful to prepare and publish domestically all that Heine put in his reports.”

Certainly this is a reasonable and proper interpretation of the law. The learned Solicitor General makes the following statement in his petition of the reasons why such petition should be granted:

“The decision of the court below may well operate as an invitation to those in charge of national security to withhold and restrict the circulation of national defense information to a far greater extent than has heretofore been deemed necessary. If the sanctions on the transmission of information in the public domain but related to the national defense are removed, as they are under the decision below, even when the transmission is engaged in with the intent to injure the United States or to give an advantage to a foreign nation, caution may well compel responsible security officers to withhold information that might otherwise be released in order to avoid illegitimate use of that information. Such restriction would operate, however, to prevent even the innocent use of information, directly or indirectly related to national defense, for scientific and educational purposes.

A decision by this Court of the question here involved will undoubtedly be useful to Congress in the drafting of new legislation now under consideration as a result of scientific discoveries relating to national defense.”

We submit that these reasons are neither persuasive nor substantial. The contention of the Government in this case that it was unlawful to send abroad information which was

in no sense secret or confidential, information that it was lawful to broadcast throughout the country, seems, with all deference, rather preposterous on its face. The discussion of the question in the opinion of the Circuit Court of Appeals is most interesting and convincing. In his petition the learned Solicitor General claims that the decision "may well operate as an invitation to those in charge of national security to withhold and restrict the circulation of national defense information to a far greater extent than has heretofore been deemed necessary." We fail to perceive any cogency in this argument. It will still be proper after this decision to publish domestically any information which it was proper to publish before the decision. We submit that there is no ground for the apprehension stated in the petition. Furthermore, the contention that the decision by this Court of the question here involved will be useful to the Congress in the drafting of new legislation does not, we submit, offer any reason why the petition should be granted.

CONCLUSION

For the reasons stated this petition for a writ of certiorari should be denied.

Respectfully submitted,

GEORGE GORDON BATTLE,
Counsel for Respondent.